

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

October 9, 2009

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

SUBJECT:   REQUEST FOR REVISION TO THE STATE OF HAWAII CREP  
              AGREEMENT TEMPLATE

**BACKGROUND:**

The 'Agreement between the U.S. Department of Agriculture Commodity Credit Corporation and the State of Hawaii Conservation Reserve Enhancement Program Agreement under the Conservation Reserve Program for the Islands of Maui, Hawaii, Molokai, Lanai, Kauai, and Oahu' ('Agreement') as reviewed and approved by the Board of Land and Natural Resources at its November 14, 2008 meeting, was authorized on January 15, 2009 by U.S. Secretary of Agriculture Ed Schafer and Hawaii Governor Linda Lingle. This 'Agreement' authorizes the Conservation Reserve Enhancement Program (CREP) in the State of Hawaii and asks agricultural producers to voluntarily retire their land to protect environmentally sensitive land, decrease erosion, restore wildlife habitat, and safeguard ground and surface water.

Through CREP, producers are asked to remove a portion of their land from production and install conservation practices to improve the overall environmental benefits from that land (e.g. reduction in soil erosion, increase in threatened or endangered species habitat, among others). The producer receives in return financial compensation for enrollment into the program and installation of conservation practices on their property. Hawaii CREP is available for 15,000 acres to address the identified objectives of enhancement of stream water quality; reduction in coral reef degradation and enhancement of near shore coastal waters; increase groundwater recharge; restore native, threatened and endangered species habitat; and control the spread of invasive species in upland areas in select areas of each of the six (6) main Hawaiian Islands.

This twenty (20) year incentive program invites landowners and lease holders to join during a five (5) year enrollment period, and requires a fifteen (15) year agreement with both USDA and State of Hawaii. As part of the implementation of the program, the State was asked to provide a State of Hawaii CREP Agreement template ('Template') for landowners receiving annual State payments for implementing conservation practices on their property, as agreed upon in the

RECOMMENDATIONS:

That the Board:

1. Approve the revised State of Hawaii CREP Agreement template between the State of Hawaii and CREP landowners subject to any amendments and approval as to form by the Department of the Attorney General.

Respectfully submitted,



Paul J. Conry, Administrator  
Division of Forestry and Wildlife

Attachment: Exhibits 1 & 2

APPROVED FOR SUBMITTAL:



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Laura H. Thielen, Chairperson

liability insurance coverage, including the coverage of the State of Hawaii, and its officers, employees, and agents. If the scheduled expiration date of the liability insurance policy is earlier than the expiration date of the time for performance under this Agreement, the LANDOWNER, upon renewal of the policy, shall promptly cause to be provided to the STATE an updated certificate of insurance. The certificate of insurance shall expressly provide that the insurance policy shall not be cancelled unless the insurance company has first given to the STATE thirty (30) calendar days' written notice of the intended cancellation.

9. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax and Other Responsibilities.

- a. In the performance of this Agreement, the LANDOWNER is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the LANDOWNER is in compliance with this Agreement.
- b. The LANDOWNER and the LANDOWNER's employees and agents are not by reason of this Agreement, agents or employees of the STATE for any purpose, and the LANDOWNER, and the LANDOWNER's employees and agents shall not be entitled to claim or receive from the STATE any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
- c. The LANDOWNER shall be responsible for the accuracy, completeness, and adequacy of LANDOWNER's performance under this Agreement. Furthermore, the LANDOWNER intentionally, voluntarily, and knowingly assumes the sole and entire liability to the LANDOWNER's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the LANDOWNER, or the LANDOWNER's employees or agents, in the course of their employment.
- d. The LANDOWNER shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the LANDOWNER by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, (iii) general excise taxes, and (iv) real property taxes. The LANDOWNER also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The LANDOWNER shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, Hawaii Revised Statutes, and shall comply with all requirements thereof. The LANDOWNER shall obtain a tax clearance certificate from

A to this Agreement, which the STATE agrees is consistent with the policies, goals, and objectives of the Hawaii Conservation Reserve Enhancement Program;

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the STATE and the LANDOWNER agree as follows:

**A. SCOPE OF PERFORMANCE**

The LANDOWNER shall perform, in a proper and satisfactory manner as determined by the STATE, the project described in the "Scope of Performance" set forth in Attachment 1 and the Conservation Plan set forth in Exhibit A, both of which are hereby made a part of this Agreement.

**B. COMPENSATION**

The LANDOWNER shall be compensated for performance of the project under this Agreement according to the "Compensation and Payment Schedule," set forth in Attachment 3, which is hereby made a part of this Agreement.

**C. TIME OF PERFORMANCE**

The performance required of the LANDOWNER under this Agreement shall be completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.

**D. CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE**

The "State of Hawaii Certificate of Exemption from Civil Service," set forth in Attachment 4, is hereby made a part of this Agreement.

**E. STANDARDS OF CONDUCT DECLARATION**

The "Standards of Conduct Declaration" by LANDOWNER, set forth in Attachment 5, is hereby made a part of this Agreement.

**F. OTHER TERMS AND CONDITIONS**

The "State of Hawaii General Conditions for Conservation Reserve Enhancement Program Agreements," set forth in Attachment 6, is hereby made a part of this Agreement.

LANDOWNER'S ACKNOWLEDGMENT

STATE OF HAWAII )

COUNTY OF \_\_\_\_\_ )

SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the LANDOWNER named in the foregoing instrument, and that he/she is authorized to sign said instrument on behalf of the LANDOWNER, and acknowledges that he/she executes said instrument as the free act and deed of the LANDOWNER.

\_\_\_\_\_  
Notary Public, State of Hawaii

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Notary Seal Affixed:  
\_\_\_\_\_

Date of the Notarized Document: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Identification or Description of the Document being Notarized: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary: \_\_\_\_\_ Circuit

\_\_\_\_\_  
Notary's Signature and Notary's Official Stamp or Seal

\_\_\_\_\_  
Date

B. Inspections. The STATE reserves the right to enter upon the LANDOWNER's property for the purpose of inspecting the Conservation Reserve Enhancement Program project area.

## **5. Termination of Agreement**

A. Refund Upon Termination. In the event this Agreement is terminated for any reason prior to the termination date set forth in Attachment 2, or the LANDOWNER sells, conveys, or otherwise transfers LANDOWNER's right, title, or interest in the project area, or any portion thereof, the LANDOWNER shall within 90 days of the termination, sale, conveyance, or transfer of title or interest in the project area, refund to the STATE all payments made with respect to this Agreement. The STATE may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purpose of the Agreement.

B. Termination of Federal Conservation Reserve Program Agreement. The LANDOWNER's federal Conservation Reserve Program agreement under the Hawaii Conservation Reserve Enhancement Program with the U.S. Department of Agriculture is a prerequisite to, and underlies, this Agreement. Any violation or cancellation of the federal Conservation Reserve Program agreement immediately violates and cancels this agreement.

A. Initial/First Payment. Following the LANDOWNER's submission of a project report and invoice as provided in Attachment 1, Section 4.A.(i), the STATE shall pay to the LANDOWNER the total amount for year 1. This payment shall be subject to the LANDOWNER's agreement to implement the conservation practices described in the approved Conservation Plan, submission of a project report with timeline and invoice, and the STATE's approval of the project report.

B. Annual and Final Payment. The LANDOWNER must submit an annual report and invoice to the STATE by March 1 of each year under this Agreement for which funding has been approved in order to receive annual payment from the STATE. This payment shall be subject to the LANDOWNER's continued timely implementation of conservation practices, satisfactory completion of conservation practices, and maintenance of previously implemented conservation practices.

C. Reimbursement. If the conservation activities established under the Conservation Plan are damaged, destroyed, or otherwise suffer a deliberate loss of functional value, the LANDOWNER will reimburse the STATE for all funds expended under this agreement.

D. Unauthorized Work. The LANDOWNER shall not receive STATE funds for activities not designated in the approved CONSERVATION PLAN. All work completed by the LANDOWNER prior to receipt of a fully-executed copy of this AGREEMENT, prior to STATE approval of funding for any subsequent years, and prior to STATE approval of any subsequent amendments to the approved CONSERVATION PLAN, shall be at the LANDOWNER's own volition and risk, including work performed during the period of any deliberations by the STATE in anticipation of approval; provided, however, that if funding and/or amendments applicable to such work are subsequently approved, the LANDOWNER may be paid for such work even if performed prior to such approval.



## STATE OF HAWAII

# CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

## 1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").\*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

**NOTE:** Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

## 2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title, if designee of the Director of DHRD)



Ethics, including the provisions which are the source for the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

LANDOWNER:

By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

Name of LANDOWNER \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

3. Recordkeeping Requirements. The LANDOWNER shall in accordance with generally accepted accounting practices, maintain fiscal records and supporting documents and related files, papers, receipts, reports, and other evidence that sufficiently and properly reflect all direct and indirect expenditures and management and fiscal practices related to the LANDOWNER's, performance under this Agreement. The LANDOWNER shall retain all records related to the LANDOWNER's performance under this Agreement for at least three (3) years after the date of submission of the LANDOWNER's Final Project Report.
4. Conflicts of Interest. The LANDOWNER represents that neither the LANDOWNER, nor any employee or agent of the LANDOWNER, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the LANDOWNER's performance under this Agreement.
5. Compliance with Laws. The LANDOWNER shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time that in any way affect the LANDOWNER's performance under this Agreement. This Agreement shall be subject to all limitations set forth in the regulations at 7 C.F.R. part 1410.
6. Indemnification and Defense. The LANDOWNER shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, and cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or in resulting from the acts or omissions of the LANDOWNER or LANDOWNER's employees, officers, or agents under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement
7. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the LANDOWNER in connection with this Agreement, the LANDOWNER shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
8. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax and Other Responsibilities.
  - a. In the performance of this Agreement, the LANDOWNER is an "independent contractor," with the authority and responsibility to control and direct the performance required under this Agreement; however, the STATE shall have a general right of inspection to determine whether, in the STATE's opinion, the LANDOWNER is in compliance with this Agreement.

Administrative Rules, that is current within six months of the date of issuance.

- h. In lieu of the above-certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the LANDOWNER may submit proof of compliance through the State Procurement Office's designated certification process.
  - i. The LANDOWNER is responsible for securing all employee-related insurance coverage for the LANDOWNER and the LANDOWNER's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
- 9. Payment Procedures. All payments under this Agreement shall be made only upon submission by LANDOWNER of original invoices specifying the amount due and certifying that it has completed performance in accordance with the Agreement. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawaii Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawaii Revised Statutes.
- 10. Federal Funds. If this Agreement is payable in whole or in part from federal funds, LANDOWNER agrees that, as to the portion of the obligation under this Agreement to be payable out of federal funds, the LANDOWNER shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.
- 11. Publicity.
  - a. The LANDOWNER shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, in any of the LANDOWNER's brochures, advertisements, or other publicity of the LANDOWNER without written permission from the Public Information Office of the State of Hawaii, Department of Land and Natural Resources. All media contacts with the LANDOWNER about the subject matter of this Agreement shall be referred to the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife.
  - b. The LANDOWNER consents to the STATE's use of LANDOWNER and the property's name, photograph, image, or likeness in brochures, advertisements, or other publicity relating to the Hawaii Conservation Reserve Enhancement Program. The STATE shall have complete ownership of all material which is developed, prepared, assembled, or conceived for brochures, advertisements, or other publicity relating to the Hawaii Conservation Reserve Enhancement Program.

STATE may retain any amounts which may be due and owing to the LANDOWNER until such time as the exact amount of damages due to the STATE from the LANDOWNER has been determined. The STATE may also set off any damages so determined against the amounts retained.

14. Disputes. No dispute arising under this Agreement may be sued upon by the LANDOWNER until after the LANDOWNER's written request to the Chairperson of the State of Hawaii Department of Land and Natural Resources, to informally resolve the dispute is rejected, or until ninety (90) days after the Chairperson's receipt of the LANDOWNER's written request whichever comes first. While the Chairperson considers the LANDOWNER's written request, the LANDOWNER agrees to proceed diligently with the performance necessary to complete the Conservation Plan unless otherwise instructed in writing by the Chairperson.
15. State Remedies. The LANDOWNER understands that in the event that it no longer meets all of the standards and conditions set forth in paragraphs 1 and 2 of these General Conditions, or in the event that LANDOWNER fails to comply with any of the other requirements, provisions, or conditions set forth in this Agreement, that the STATE may refuse to make further payments to LANDOWNER under this Agreement.
16. Modifications of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the LANDOWNER and the STATE.
17. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to be given to the STATE shall be sent to: Chairperson, Board of Land and Natural Resources, 1151 Punchbowl Street, Honolulu, Hawaii 96813. Notice to the LANDOWNER shall be sent to the LANDOWNER's address as indicated in the Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The LANDOWNER is responsible for notifying the DIRECTOR in writing of any change of address.
18. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with this Agreement. The fact that the STATE specifically refers to one section of the Hawaii Revised Statutes, and does not include other statutory sections in this Agreement shall not constitute a waiver or relinquishment of the STATE's rights or the LANDOWNER's obligations under the statutes.
19. Severability. In the event that any provision of this Agreement is declared invalid